IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.2.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.1279 of 1990

Kamalammal(alias)
Kamalam .. Plaintiff/Appellant

-Vs-

1.Ganapathy Appan
2.Sri.Palaniswamy
3.Sri.Veluswamy
4.Smt.Lakshmi
5.Kum.Padmavathi (Minor)
6.Sri.Peria Subbaraya Gounder
7.Sri.Subbanna gounder
8.Sri.Kaliswamy gounder ..Defandants/ Respondents

(Minor 5th respondent rep. By guardian 4th respondent herein.)

The Appeal is filed Under Section 96 of the Civil Procedure Code against the Judgment and decree dated 29.10.1990 made in O.S.No.204 of 1989 on the file of the Subordinate Judge's Court, Tirupur.

For Appellant : Mr.K.Srinivasan
For Respondents : Mr.P.Srinivas for M/s.N.Damodaran and Mr.P.Mani.

WEB COPY

JUDGMENT

This appeal is filed against the Judgment and decree dated 29.10.1990 made in O.S.No.204 of 1989 on the file of the Subordinate Judge's Court, Tirupur in and by which the learned Sub Judge after analysing the evidence in depth found that the plaintiff is not entitled for the suit claim and accordingly dismissed the suit.

2. The present appeal is filed by the plaintiff against such

https://hcservices.ecourts.gov.in/hcservices/

finding. For convenience, the parties are referred as arrayed in the original suit.

3. The plaintiff states as follows:-

3.1. Plaintiff is the second wife of the Kaliswamy Gounder. Kaliswami Gounder had a first wife by name Thangammal. She died leaving behind her four sons defendants 1 to 3 and another Lingaswami gounder, who died leaving behind him his wife and daughter who are defendants 4 and 5. After death of his 1st wife Thangammal, the said Kaliswami Gounder married the plaintiff as his second wife on 19.2.78 at Balchwar Dhevakambadi village in Mysore State. The marriage was performed according to religious rites and she was brought to Ayyampalayam and she lived with her husband and his mother.

3.2. Mother died with in three years and the husband died on 16.7.86 leaving behind the plaintiff. The plaintiff and her husband lived in Ayyampalayam in a separate house bearing Door No.22 B, Mariamman Koil Street. The father and sons were enjoying portions of the property with out any division. After the death of the father, the three sons and daughter in law promised to give Rs.1500/- per annum until final division was effected. The plaintiff believed them and from 24.7.86, the three sons and daughter in law promised to pay Rs.1,500/- until partition was effected. But, they have not done so. The plaintiff is entitled to a share in the suit property. Hence, the suit.

4. The written statement of defendants 1, 2, 3, 4, 5, 6 and 8 reads as follows:-

4.1. The plaintiff is not in possession and enjoyment of the suit property and she is not wife of the late Kaliswamy Gounder. She has neither title nor right over the property. Hence the suit is liable to be dismissed.

5. M/s. Kamala, Chandrakumar, Subramaniam and Govindasamy were examined as P.Ws 1 to 4. Ex.A.1 to Ex.A.21 were marked on the side of the plaintiff to prove the claim of the 3rd defendant. Mr.Velusamy was examined as D.W.1 and no documents were filed to confront the claim of the plaintiff.

6. The lower court after analysing the evidence found that the plaintiff is not entitled to suit claim and accordingly dismissed the suit. The present appeal is filed against such finding.

7. Heard Mr.K.Srinivasan, learned counsel for the appellant and Mr.P.Srinivas, learned counsel for the respondents.

8. Upon hearing the rival claims, the points for determination are:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(1) Whether the plaintiff and late Kaliswamy Gounder lived together at Door No.22B, Mariamman Koil Street, Ayyampalayam till the time of his death?

(2) Whether the plaintiff married Kaliswamy Gounder as second wife of 19.2.78 at Balchwar Dhevakambadi village in Mysore State according to religious rites and customs?

(3)Whether the late Kaliswamy Gounder was keeping the plaintiff only as servant maid?

(4)Whether the finding of the lower court in dismissing the suit is in order?

9. Point No.1:-

9.1.1.It is the specific case of the plaintiff that she was living with Kaliswamy Gounder till the time of his death at No.22, Mariamman Koil Street, Ayyampalayam. This fact was not confronted by the defendant. The status of the plaintiff alone is disputed by the defendant. Even in the reply notice by the defendant dated 28.6.89, which is marked as Ex.A.18, the defendant admitted that the plaintiff was living with late Baluswamy Gounder as servant maid. The relevant portion in Ex.A.18 reads as follows:-. "உங்கள் சாட்சிக்காரியை மேற்படி லேட் காளிச்சாமி கவுண்டர் வீட்டு வேலைக்காக வைத்திருந்தார் "

9.1.2. No where it is stated by the defendant that the plaintiff was never living with late Kaliswamy Gounder at No.22, Mariamman Koil Street, Ayyampalayam. P.W.1 has specifically stated that she was living with late Kaliswamy Gounder in the said address. This fact was not confronted with by the defendant. In fact, D.W.1 admitted that the plaintiff has been living at Mariammal Koil Street, Ayyampalayam. The evidence in this regard reads as follows:-"மாரியம்மன் கோவில் வீதி வீட்டில் வாதி குடியிருக்கின்றார். சமயல் செய்து போட்டவர் என்பதால் மனிதாபிமான அடிப்படையில் வீட்டுக்கு சென்றோம் , "

9.1.3. From the narration of events, I am satisfied that the plaintiff was living with late Kaliswamy Gounder till the time of his death at 22 B, Mariamman Koil Street, Ayyampalayam.

9.1.4. Hence this point is answered in favour of the plaintiff.

Point No.2:-

9.2.1. It is the specific case of the plaintiff that she married Kaliswamy Gounder as second wife on 19.2.78 at Balchwar Dhevakambadi village in Mysore State according to religious rites and custom. The plaintiff has also examined P.W.3 to prove the performance of the marriage between her and Kaliswamy Gounder according to religious rites and custom and the invitation card has also been filed to prove the marriage. The plaintiff has also filed several letters viz., Ex.A.6, 7, 12, 16, 19, 20 and 21 to prove her status as wife with late

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Kaliswamy Gounder. The defendant disputed the marriage between the plaintiff and the late Kaliswamy Gounder. So, now, I have to find out, with the available documents, whether the factum of marriage between the plaintiff and Kaliswamy Gounder is proved?

9.2.2. It is true that late Kaliswamy Gounder died on 16.7.1986 at Door No.22B, Mariammal Koil Street, Ayampalayam. Ex.A.4 is the death certificate. Plaintiff was also living with Kaliswamy Gounder at the time of his death. Ex.A.8 is the voters list. According to voters list, Kaliappa Gounder is the husband of the plaintiff.

9.2.3. Ex.A.3 is the marriage invitation. According to the marriage invitation, the plaintiff married to Kaliswamy Gounder on 19.2.78 according to religious rites and custom. No where the genuineness of these documents is disputed. But the factum of the marriage between the plaintiff and Kaliswamy Gounder was spoken in detail by P.W.3.

9.2.4. Now, I have to find out whether the evidence of P.W.3 could be acceptable with regard to the factum of marriage between the plaintiff and Kaliswamy Gounder. At this juncture, it is useful to refer the letters referred above filed by the plaintiff to find out whether the plaintiff was living with Kaliswamy Gounder as his wife. Though a bald suggestion was put to P.W.1 regarding genuineness of this letter, the defendant has not confronted the same by any modes. While he was giving evidence nothing was spoken to by D.W.1 regarding the genuineness of the letters viz.,Exhibits.A.6, 7, 12, 16, 19, 20 and 21 to confront the claim of the plaintiff. So, I am of the considered view that the genuineness of these letters is admitted by the defendant, otherwise, D.W.1 would have confronted the same while giving evidence.

9.2.5. Ex.A.6 is the letter of the plaintiff addressed to her husband viz., Kaliswamy Gounder. It was written by the plaintiff to her husband on 3.7.78. The postal seal was found on the letter would vouch the genuineness. The opening sentence of this letter reads as follows:- "அன்புள்ள கணவருக்கு மனைவி எழுதும் கடிதம்".

9.2.6. Ex.A.7 is the letter dated 17.7.78 written by the plaintiff to her husband. The opening sentence reads as follows:-"மதிப்பிற்குரிய கணவருக்கு மனைவி கமலம் எழுதிய ஆசை மடல்". The postal seal found on the letter would vouch the genuineness.

9.2.7. Ex.A.12 is the letter dated 9.12.80 written by late Kaliswamy Gounder to Mr.D.Jeyaraj. Late Kaliswamy Gounder written this letter from Coimbatore to Mr.D.Jeyaraj, who was residing at

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Murugan Foundary, Therknambi(P.O.) Gundalpet TK, Mysore State, Karnataka. The opening sentence reads as follows:-"அன்புள்ள அப்பா அம்மா செல்வன் ராஜ்குமார் ஆகியோருக்கும் அங்கே உள்ளவர்களுக்கும் கமலா கணவர் எழுதிய கடிதம் ". The postal seal found on the letter would vouch the genuineness of this letter.

9.2.8. Ex.A.16 dated 20.5.83 written by late Kaliswamy Gounder to his father-in-law. The opening sentence reads as follows:-"அன்பு பிரியமுள்ள மாமா, மாமி அவர்களுக்கு உங்கள் அன்பு, மருமகன், மகள் கமல் இருவரும் சேர்ந்து எழுதும் கடிதம் ". The letter ends with the following recitals :- "இப்படிக்கு உங்கள் அன்பு, மருமகன், மகள், கமல் "

9.2.9. Ex.A.19 is the letter dated 13.8.85 written by one Chandrakumar to late Kaliswamy Gounder. This letter exposes the relationship between late Kaliswamy Gounder with the family members of the plaintiff.

9.2.10. Ex.A.20 is the letter dated 28.11.85 written by Kaliswamy gounder to Mr.K.Chandrakumar. The opening sentence of this letter reads as follows:-"அன்பு, பிரியமுள்ள மாமா அவர்களுக்கு உங்கள் மருமகனும் மகள் கமலா இருவரும் சேர்ந்து எழுதும் கடிதம்.". The letter closes as "இப்படிக்கு அன்புள்ள மருமகன், முகள் கமல் ".

9.2.11. Ex.A.21 is the letter dated 2.8.85 written by Duraiswamy to late Kaliswamy Gounder. Though in the envelope, one Mr.Senthil Kumar has been shown as addressee, the contents of the letter is related to late Kaliswamy Gounder and the plaintiff. This letter also exposes the relationship between the plaintiff and late Kaliswamy Gounder as that of wife and husband.

9.2.12. These letters would reveal that the plaintiff was living with Kaliswamy Gounder as wife and not as servant maid as stated by the defendant. In fact, late Kaliswamy Gounder accepted the plaintiff as his wife and sent communications only in this regard. Whereas, the lower court rejected these letters on the ground that the same was not proved by the plaintiff by proper means.

9.2.13. The plaintiff was living together with late Kaliswamy gounder. She was living with late Kaliswamy Gounder till the time of his death and in that capacity she was in possession of those letters. These letters were marked on the side of the plaintiff. Moreover, D.W.1 has not confronted its genuineness by letting any evidence when the fact is such, it is not open to the lower court to reject these letters on the ground that they were not proved by any modes. The genuineness of these documents has to be viewed in the light of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

evidence of P.W.3 coupled with the marriage invitation card. P.W.3 has spoken about the performance of the marriage between the plaintiff and late Kandaswamy Gounder. The letter correspondence also would prove her status as wife with late Kaliswamy Gounder. The contents of these letters coupled with the evidence of P.W.3 and the marriage invitation card would prove the marriage between the plaintiff and late Kaliswamy Gounder according to the religious custom. The lower court erred in holding that the marriage between the plaintiff and the late Kaliswamy Gounder was not proved by acceptable evidence. However, undisputed letters are available to prove the status of the plaintiff as wife of late Kaliswamy Gounder. So, I am satisfied that the findings of the lower court in dismissing the case of the plaintiff is incorrect and the same is liable to be set aside and hence, this point is answered in favour of the plaintiff.

Point No.3:-

10. In view of the findings rendered in Point Nos. 1 and 2, I am of the considered view that the plaintiff was living with late Kaliswamy Gounder as his wife only and not as servant maid and this point is answered in favour of the plaintiff.

Point No.4:- Admittedly, the plaintiff is the wife of late Kaliswamy Gounder. The suit property belongs to Kaliswamy Gounder and it is not disputed by the defendant. The said Kaliswamy Gounder died intestate. It is not the case of the defendant that late Kaliswamy Gounder alienated the suit property in one way or the other before his death. If that be so, the suit property was available for partition on the death of Kaliswamy Gounder. The plaintiff is the wife of late Kaliswamy Gounder. Plaintiff being the wife of late Kaliswamy Gounder is entitled to 1/5th share of the suit property. Therefore, the finding of the lower Court in dismissing the suit is not in order and the finding is liable to be set aside and accordingly it is set aside. Hence this point is answered in favour of the plaintiff.

11. In the result, the appeal is allowed. The judgment and decree of the lower court in dismissing the suit is set aside and the preliminary decree is passed. The plaintiff is entitled to 1/5th share of the suit property. The plaintiff is also entitled to all the relief as prayed for in the suit. However, the parties have to bear their respective costs.

WEB COPY

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nvsri

https://hcservices.ecourts.gov.in/hcservices/

To

1. Subordinate Judge
Tirupur. (with records)

2. The Record Keeper,
VR Section,
High Court, Madras.

1 cc to Mr.K.Srinivasan, Advocte, sR. 10713
1 cc to Mr.P.Srinivas, Advocate, Sr. 10236

A.S.No.1279 of 1990

AKM (CO)
kk 4/4

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/